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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Equal Employment Opportunity Commission,	)	Case No.
	)	
Plaintiff,	)	
	)	
vs.	)	<b>COMPLAINT AND</b>
	)	<b>JURY TRIAL DEMAND</b>
Tempe Elementary School District No. 3,	)	
	)	
Defendant.	)	

**NATURE OF THE ACTIONS**

This is an action under the Age Discrimination in Employment Act (“ADEA”) to correct unlawful employment practices on the basis of age, and to provide appropriate relief to Peggy Roupe and a group of retired employees who were discriminatorily compensated for accrued leave. (“aggrieved individuals”). Plaintiff, the United States Equal Employment Opportunity Commission (the “Commission”), brings this claim against Defendant Tempe Elementary School District No. 3 (“Defendant”) alleging that from at least April 2, 2008 through the present, Defendant has maintained a facially age-discriminatory early retirement incentive plan which compensates retiring

1 employees for accumulated general leave at rates which vary based on age, so that  
2 employees who retire at age 61 or older are compensated for accumulated leave at  
3 lower rates than the rates paid to younger employees who retire between ages 55 and  
4 60.  
5

### 6 **JURISDICTION AND VENUE**

7 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331,  
8 1337, 1343 and 1345. This action is brought pursuant to Section 7(b) of the Age  
9 Discrimination in Employment Act, as amended, 29 U.S. C. § 626(b) ( the “Act”)’  
10 which incorporates by reference Sections 16(c) and 17 of the Fair Labor Standards Act  
11 of 1938 (the “FLSA”), as amended, 29 U.S.C. §§ 216(c) and 217.  
12

13  
14 2. The employment practices alleged to be unlawful were committed within  
15 the jurisdiction of the United States District Court for the District of Arizona.  
16

### 17 **PARTIES**

18 1. Plaintiff, the Equal Employment Opportunity Commission (the  
19 “Commission”), is the agency of the United States of America charged with the  
20 administration, interpretation, and enforcement of the ADEA, and is expressly  
21 authorized to bring this action by Section 7(b) of the ADEA, 29 U.S.C. § 626(b), as  
22 amended.  
23

24 2. At all relevant times, Defendant, Tempe Elementary School District No.  
25 3, (“Defendant”) has continuously been operating and doing business in the State of  
26 Arizona and the County of Maricopa, and has continuously had at least twenty (20)  
27 employees.  
28

1           3.       At all relevant times, Defendant School District has continuously been an  
2 employer, within the meaning of Section 11(b) of the ADEA, 29 U.S.C. § 630(b).

3           4.       At all relevant times, Defendant School District has continuously been a  
4 political subdivision of the State of Arizona.

5           5.       Prior to the institution of this lawsuit, the Commission's representatives  
6 attempted to eliminate the unlawful employment practices alleged below and to effect a  
7 voluntary compliance with the ADEA through informal methods of conciliation,  
8 conferences and persuasion within the meaning of Section 7(b) of the ADEA, 29 U.S.C.  
9 § 626(b).

10  
11  
12                               **STATEMENT OF CLAIM**  
13

14           6.       Since at least April 3, 2008, Defendant has engaged in unlawful  
15 employment practices in violation of Section 4(2)(b) of the ADEA, 29 U.S.C.  
16 §623(a)(2) by utilizing a policy titled "Retirement of Professional / Support Staff  
17 Members". This policy provides for retiring employees to be compensated for  
18 accumulated leave at rates which decrease based on the retiring employee's age, as  
19 follows:  
20

21                   (a)       employees who retire between the ages of 55 through 60 are paid  
22 at 52% of the employee's current daily salary;

23                   (b)       employees who retire at age 61 are paid at 47% of the employee's  
24 daily rate at age 60;

25                   (c)       employees who retire at age 62 are paid at 43% of the employee's  
26 daily rate at age 60;  
27  
28

1 (d) employees who retire at age 63 are paid at 39% of the employee's  
2 daily rate at age 60;

3 (e) employees who retire at age 64 are paid at 35% of the employee's  
4 daily rate at age 60;

5 (f) employees who retire at age 65 are paid at 31% of the employee's  
6 daily rate at age 60, or 50% of the substitute teacher daily rate at the time  
7 of retirement, whichever is greater;

8 (g) employees who retire at age 66 or older are paid at 50% of the  
9 substitute teacher daily rate at the time of retirement.

10 7. Defendant's leave compensation plan for retiring employees (as described  
11 in Paragraph 6 above) was implemented for the purpose of creating an incentive for  
12 employees to retire at a younger age.

13 8. Defendant's leave compensation plan for retiring employees (as described  
14 in Paragraph 6 above) is an Early Retirement Incentive Plan ("ERIP").

15 9. On its face, Defendant's leave compensation ERIP (as described in  
16 Paragraph 6 above) discriminates based on age by providing for employees age 61 and  
17 older, to be compensated at lower rates than are paid to younger employees, age 55  
18 through 60.

19 10. On its face, Defendant's leave compensation ERIP (as described in  
20 Paragraph 6 above) discriminates based on age by providing compensation at rates  
21 which decrease based on increased years of age.



1 C. Grant judgment requiring Defendant to pay Peggy Roupe and all  
2 employees who retired between April 3, 2008 and the present, and were age 61 or over  
3 when they retired, the difference between the amount each was paid as compensation  
4 for accumulated leave, and the amount each would have been paid based on 52% of the  
5 employee's daily rate at retirement, plus prejudgment interest, and an equal sum as  
6 liquidated damages.  
7

8 D. Order Defendant to institute and carry out policies, practices, and  
9 programs which provide equal opportunity early retirement incentive benefits for  
10 qualified individuals, and which eradicate the effects of its past and present unlawful  
11 employment practices.  
12

13 E. Order Defendant School District to make whole all individuals adversely  
14 affected by the unlawful practices above, by providing affirmative relief necessary to  
15 eradicate the effects of its unlawful practices, including but not limited to the amount to  
16 which Peggy Roupe and a class of retired employees would be entitled but for the  
17 unlawful discrimination.  
18

19 E. Grant such further relief as this Court deems necessary and proper in the  
20 public interest.  
21

22 I. Award the Commission its costs of this action.  
23

24 **JURY TRIAL DEMAND**  
25

26 The Commission requests a jury trial on all questions of fact raised by its  
27 Complaint.  
28

Dated: September 28, 2011.

1 RESPECTFULLY SUBMITTED,

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